

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

RECEIVED

AUG 13 2004

In the Matter of

Amendment of Section 73.202(b)  
Table of Allotments  
FM Broadcast Stations  
(Lake Charles, Louisiana and  
West Orange, Texas)

)  
)  
)  
)  
)

MB Docket No. \_\_\_\_\_  
RM - \_\_\_\_\_

Federal Communications Commission  
Office of Secretary

To: Office of the Secretary  
Attn: Assistant Chief, Audio Division  
Media Bureau

**RESUBMISSION OF PETITION FOR RULE MAKING**

Apex Broadcasting, Inc. ("Apex"), licensee of KBXG(FM), Lake Charles, Louisiana, by its counsel, hereby resubmits the Petition for Rule Making (the "Petition") that it filed on May 24, 2004. The Petition was incorrectly returned by letter on July 13, 2004. In support hereof, Apex states as follows:

1. The Petition proposed to delete Channel 258C0 from Lake Charles, Louisiana and allot Channel 258C0 to West Orange, Texas as that community's first local service. On July 13, 2004, counsel for Apex received a letter from John A. Karousos, Assistant Chief of the Audio Division, which returned the Petition as premature (the "Letter"). See Attachment 1. The Letter indicated that the Petition was premature because there was a one-step application on file with the Commission (File No. BPH-20040428AAG) for the upgrade of KBXG from Channel 258C1 to Channel 258C0 that had not yet been granted. However, the Letter was issued in error because, while Apex does have the referenced application pending at the Commission, it is not a one-step application.<sup>1</sup> Apex has already been issued a construction permit to upgrade KBXG to

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<sup>1</sup> Attachment 2 is a copy of the page where Apex certified that the application was not a one-step proposal.

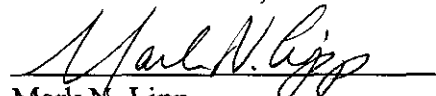
Channel 258C0.<sup>2</sup> *See* File No. BPH-19980602IJ. Rather, the application only proposes to relocate the KBXG transmitter and make other minor changes. Further, as evidenced by the FM Table of Allotments for Lake Charles, Louisiana, attached hereto as Attachment 3, Channel 258C0 is listed as allotted to Lake Charles, Louisiana pursuant to a previous construction permit issued to Apex. *See* File No. BPH-19980602IJ.

2. Therefore, rather than petition the Commission for reconsideration of the decision to return the Petition, Apex is resubmitting its Petition to delete Channel 258C0 from Lake Charles, Louisiana and allot Channel 258C0 to West Orange, Texas as that community's first local service. *See* Attachment 4. Apex reiterates that if the Commission allots Channel 258C0 at West Orange as that community's first local service, it will file an application and will construct the facilities as authorized. The Commission should promptly issue a Notice of Proposed Rule Making as described in the Petition.

Respectfully submitted,

APEX BROADCASTING, INC.

By:

  
Mark N. Lipp  
Scott Woodworth  
Vinson & Elkins L.L.P.  
1455 Pennsylvania Ave, NW  
Suite 600  
Washington, DC 20004-1008  
(202) 639-6500

Its Counsel

August 13, 2004

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<sup>2</sup> Apex, simultaneously with the filing of its pending minor change application, turned in the construction permit that it was issued pursuant to File No. BPH-19980602IJ so that a new construction permit could be issued. *See* Technical Statement, File No. BPH-20040428AAG. However, the FM Table of Allotments, Section 73.202(b), retains Channel 258C0 at Lake Charles, Louisiana.

## **ATTACHMENT 1**



Federal Communications Commission  
Washington, D.C. 20554

July 13, 2004

Mark N. Lipp, Esq.  
Vinson & Elkins L.L.P.  
1455 Pennsylvania Ave., N.W.  
Suite 600  
Washington, D.C. 20004-1008

Dear Mr. Lipp:

This is in response to the petition for rule making you filed on behalf of Apex Broadcasting, Inc, requesting the reallocation of Channel 258C0 from Lake Charles, Louisiana to West Orange, Texas, as the community's first local aural transmission service.

We have reviewed the proposal and find that it is unacceptable for consideration at this time. Specifically, the proposal is premature since the one-step application (File No. BPH-20040428AAG) for the upgrade from Channel 258C1 to Channel 258C0 at Lake Charles has not been granted, and no authorization has been issued. Accordingly, we cannot consider your petition for rule making to reallocate Channel 258C0 from Lake Charles, Louisiana to West Orange, Texas.

Therefore, we are returning your petition for rule making. You may refile your petition, after there has been a disposition on the one-step upgrade application.

Sincerely,

A large, stylized handwritten signature in black ink, which appears to read "John A. Karousos", is written over the typed name and title.

John A. Karousos  
Assistant Chief, Audio Division  
Media Bureau

Enclosures

## **ATTACHMENT 2**

**(Copy of the relevant pages to File No. BPH-20040428AAG.**

**See question 4 for Apex certification that the application is not a one-step proposal)**

Federal Communications Commission Washington, D.C. 20554	Approved by OMB 3060-0027 (June 2002)	FOR FCC USE ONLY
<b>FCC 301</b>		
<b>APPLICATION FOR CONSTRUCTION PERMIT FOR COMMERCIAL BROADCAST STATION</b>		FOR COMMISSION USE ONLY FILE NO. BPH - 20040428AAG
Read INSTRUCTIONS Before Filling Out Form		

**Section I - General Information**

1. Legal Name of the Applicant	APEX BROADCASTING, INC.		
Mailing Address	C/O 1964 ASHLEY RIVER ROAD		
City	State or Country (if foreign address)	ZIP Code	
CHARLESTON	SC	29407 -	
Telephone Number (include area code)	E-Mail Address (if available)		
8438529003			
FCC Registration Number:	Call Sign	Facility ID Number	
0004202685	KBXG	53643	
2. Contact Representative (if other than Applicant)	Firm or Company Name		
JOHN C. TRENT, ESQUIRE	PUTBRESE HUNSAKER & TRENT, P.C.		
Telephone Number (include area code)	E-Mail Address (if available)		
5404597646	FCCMAN3@SHENTEL.NET		
3. If this application has been submitted without a fee, indicate reason for fee exemption (see 47 C.F.R. Section 1.1114):			
<input type="radio"/> Governmental Entity <input type="radio"/> Other			
4. Application Purpose			
<input type="radio"/> New station	<input type="radio"/> Major Modification of construction permit		
<input type="radio"/> Major Change in licensed facility	<input type="radio"/> Minor Modification of construction permit		
<input checked="" type="radio"/> Minor Change in licensed facility	<input type="radio"/> Major Amendment to pending application		
	<input type="radio"/> Minor Amendment to pending application		
(a) File number of original construction permit:	<input type="checkbox"/> NA		
(b) Service Type:	<input type="radio"/> AM <input checked="" type="radio"/> FM <input type="radio"/> TV <input type="radio"/> DTV		
(c) Community of License:			
City: LAKE CHARLES	State: LA		
(d) Facility Type	<input checked="" type="radio"/> Main <input type="radio"/> Auxiliary		
If an amendment, submit as an Exhibit a listing by Section and Question Number the portions of the pending application that are being revised.			
[Exhibit 1]			

**NOTE:** In addition to the information called for in this section, an explanatory exhibit providing full particulars must be submitted for each question for which a "No" response is provided.

**Section II - Legal**

	Longitude: Degrees 93 Minutes 34 Seconds 35 <input checked="" type="radio"/> West <input type="radio"/> East																																																																																																										
4.	One Step Proposal Allotment Coordinates: (NAD 27) <input checked="" type="checkbox"/> Not Applicable  Latitude: Degrees Minutes Seconds <input type="radio"/> North <input type="radio"/> South  Longitude: Degrees Minutes Seconds <input type="radio"/> West <input type="radio"/> East																																																																																																										
5.	Antenna Structure Registration Number: 1020684 <input type="checkbox"/> Not Applicable <input type="checkbox"/> Notification filed with FAA																																																																																																										
6.	Overall Tower Height Above Ground Level:								402meters																																																																																																		
7.	Height of Radiation Center Above Mean Sea Level:								317 meters(H)		317 meters(V)																																																																																																
8.	Height of Radiation Center Above Ground Level:								307.9meters(H)		307.9meters(V)																																																																																																
9.	Height of Radiation Center Above Average Terrain:								311.3meters(H)		311.3meters(V)																																																																																																
10.	Effective Radiated Power:								100 kW(H)		100 kW(V)																																																																																																
11.	Maximum Effective Radiated Power: <input checked="" type="checkbox"/> Not Applicable (Beam-Tilt Antenna ONLY)								kW(H)		kW(V)																																																																																																
12.	Directional Antenna Relative Field Values: <input checked="" type="checkbox"/> Not applicable (Nondirectional)  Rotation (Degrees): <input type="checkbox"/> No Rotation																																																																																																										
<table border="1" style="width: 100%; border-collapse: collapse; text-align: center;"> <thead> <tr> <th>Degrees</th><th>Value</th><th>Degrees</th><th>Value</th><th>Degrees</th><th>Value</th><th>Degrees</th><th>Value</th><th>Degrees</th><th>Value</th><th>Degrees</th><th>Value</th></tr> </thead> <tbody> <tr><td>0</td><td></td><td>10</td><td></td><td>20</td><td></td><td>30</td><td></td><td>40</td><td></td><td>50</td><td></td></tr> <tr><td>60</td><td></td><td>70</td><td></td><td>80</td><td></td><td>90</td><td></td><td>100</td><td></td><td>110</td><td></td></tr> <tr><td>120</td><td></td><td>130</td><td></td><td>140</td><td></td><td>150</td><td></td><td>160</td><td></td><td>170</td><td></td></tr> <tr><td>180</td><td></td><td>190</td><td></td><td>200</td><td></td><td>210</td><td></td><td>220</td><td></td><td>230</td><td></td></tr> <tr><td>240</td><td></td><td>250</td><td></td><td>260</td><td></td><td>270</td><td></td><td>280</td><td></td><td>290</td><td></td></tr> <tr><td>300</td><td></td><td>310</td><td></td><td>320</td><td></td><td>330</td><td></td><td>340</td><td></td><td>350</td><td></td></tr> <tr> <td colspan="2">Additional Azimuths</td><td colspan="10"></td></tr> </tbody> </table>												Degrees	Value	Degrees	Value	Degrees	Value	Degrees	Value	Degrees	Value	Degrees	Value	0		10		20		30		40		50		60		70		80		90		100		110		120		130		140		150		160		170		180		190		200		210		220		230		240		250		260		270		280		290		300		310		320		330		340		350		Additional Azimuths											
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Relative Field Polar Plot

**NOTE:** In addition to the information called for in this section, an explanatory exhibit providing full particulars must be submitted for each question for which a "No" response is provided.

#### CERTIFICATION

**AUXILIARY ANTENNA APPLICANTS ARE NOT REQUIRED TO RESPOND TO ITEMS 13-16. PROCEED TO ITEM 17.**

	<b>13. Allotment.</b> The proposed facility complies with the allotment requirements of 47 C.F.R. Section 73.203.	<input checked="" type="radio"/> Yes <input type="radio"/> No  See Explanation in [Exhibit 21]
	<b>14. Community Coverage.</b> The proposed facility complies with 47 C.F.R. Section 73.315.	<input checked="" type="radio"/> Yes <input type="radio"/> No  See Explanation in [Exhibit 22]

## **ATTACHMENT 3**



## Federal Communications Commission

§ 73.202

## KENTUCKY—Continued

	Channel No.
Madisonville .....	230C2
Manchester .....	276A, 289C3
Mannsville .....	260C3
Marion .....	274A
Mayfield .....	234C2
Maysville .....	240A
McKee .....	300A
Middlesboro .....	224A
Midway .....	300A
Monticello .....	226A, 289A
Morehead .....	242A, 291C3
Morganfield .....	237A
Morgantown .....	256A
Mount Sterling .....	286C3, 294B1
Mount Vernon .....	275A
Munfordville .....	272A
Murray .....	279C1
Nicholasville .....	273A
Owensboro .....	223C, 241C
Owingsville .....	299A
Paducah .....	227C1, 245C1
Paintsville .....	255C1
Paris .....	245C2
Philpot .....	234A
Pikeville .....	226C2
Pineville .....	292A
Prestonsburg .....	238C, 287A
Princeton .....	285A
Providence .....	249A
Raddcliff .....	278C3
Reidland .....	294A
Richmond .....	268C3
Russell Springs .....	224A
Russellville .....	266C1
Salversville .....	293C3
Science Hill .....	291A
Scottsville .....	257A
Shelbyville .....	269A
Shepherdsville .....	286A
Smith Mills .....	233A
Smiths Grove .....	296C2
Somerset .....	246C2, 272A
Springfield .....	274A
St. Matthews .....	276A
Stamping Ground .....	241A
Stanford .....	242C3
Stanton .....	285A
Sturgis .....	267A
Tompkinsville .....	221A, 274A
Valley Station .....	290A
Vanceburg .....	285A
Vancleva .....	260A
Versailles .....	292A
Vine Grove .....	268A
Virgie .....	298A
West Liberty .....	275A
Westwood .....	259A
Whitesburg .....	280A
Whitesville .....	246A
Whitley City .....	252A
Wickliffe .....	240A
Williamsburg .....	282A
Williamstown .....	293A
Wilmore .....	237A
Winchester .....	261C2

## LOUISIANA

	Channel No.
Abbeville .....	286C3

## LOUISIANA—Continued

	Channel No.
Alexandria .....	226C, 230A, 245C, 262C, 295A
Amite .....	243A
Arcadia .....	223A
Atlanta .....	293C3
Baker .....	297A
Ball .....	288A
Basile .....	271C1
Bastrop .....	230A, 247A, 261C2
Baton Rouge .....	251C, 264C1, 268C, 273C
Bayou Vista .....	237C3
Belle Chasse .....	275C3
Benton .....	221A
Berwick .....	290A
Blanchard .....	271C3
Bordelonville .....	280A
Boyce .....	272C3
Breaux Bridge .....	243C2
Brusly .....	241C2
Bunkie .....	282C3
Clayton .....	266A
Clinton .....	224C2
Columbia .....	276C3
Coushatta .....	235C3
Crowley .....	275C
Delhi .....	228A
DeQuincy .....	221C3
DeRidder .....	250C2
Donaldsonville .....	285A
Dubach .....	249C1
Empire .....	283C2
Erath .....	300C1
Eunice .....	288A
Farmerville .....	224A
Ferriday .....	296C3
Folsom .....	285A
Franklin .....	288A, 295C3
Franklinton .....	255A
Galliano .....	232C1
Gibbsland .....	283A
Golden Meadow .....	289C2
Hammond .....	277C, 296A
Haughton .....	279A
Haynesville .....	288A
Hodge .....	231C2
Homer .....	272A, 294C2
Houma .....	281C, 298C1
Jackson .....	283A
Jena .....	274A
Jennings .....	225C2
Jonesboro .....	285C3
Jonesville .....	286A
Kaplan .....	247C2
Kenner .....	287C1
Kentwood .....	231C1
Lacombe .....	234A
Lafayette .....	233C, 238C2, 260C
Lake Arthur .....	298C2
Lake Charles .....	241C1, 258C0, 277C2
Lake Providence .....	224A
LaPlace .....	222C
Larose .....	262C2
Leesville .....	224A, 228C3, 252A, 289C3
Mamou .....	266C3
Mansfield .....	224A, 284C3
Mansura .....	240A
Many .....	296C3
Marksville .....	249A
Maurice .....	292A
Minden .....	239C2
Monroe .....	270C, 281C, 287C2, 291C
Moreauville .....	221A
Morgan City .....	244C3

## **ATTACHMENT 4**

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

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In the Matter of

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

MAY 24 2004

To: Office of the Secretary  
Attn: Assistant Chief, Audio Division  
Media Bureau

**PETITION FOR RULE MAKING**

Apex Broadcasting, Inc. ("Apex"), licensee of KBXG(FM), Lake Charles, Louisiana, by its counsel, hereby submits this Petition for Rule Making, which proposes to delete Channel 258C0 from Lake Charles, Louisiana and allot Channel 258C0 to West Orange, Texas as that community's first local service. If this Petition is granted, Apex will file an application for Channel 258C0 at West Orange and construct the facilities as authorized. The following table summarizes the changes requested in this Petition:

City	Channel	
	Existing	Proposed
Lake Charles, Louisiana	241C1, 258C0, 277C2	241C1, 277C2
West Orange, Texas	---	258C0

**I. Technical Analysis**

1. As demonstrated in the Technical Exhibit, Channel 258C0 can be allotted to West Orange at coordinates 30-07-21 North Latitude, 93-36-21 West Longitude consistent with Section 73.207 of the Commission's Rules with respect to all existing and proposed domestic

allotments and facilities. See Figure 1. A 70 dBu signal can be provided to West Orange from the proposed reference coordinates. See Figure 2. The relocation of KBXG from Lake Charles to West Orange will result in a predicted net gain in population of 273,454 persons within the KBXG 60 dBu contour. See Figure 3. The entire loss area will continue to receive at least 5 other aural services and will thus remain well served. See Figure 4.

## **II. Change in Community of License**

2. Apex desires to change the community of license of KBXG from Lake Charles to West Orange under the guidelines set forth in *Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989), *recons. granted in part*, 5 FCC Rcd 7094 (1990). There, the Commission stated that a station may change its community of license without subjecting the license to other expressions of interest if (1) the proposed allotment is mutually exclusive with the current allotment; (2) the current community of license will not be deprived of its only local service; and (3) the proposed arrangement of allotments is preferred under the Commission's allotment priorities. These criteria are met here. First, the proposed use of Channel 258C0 at West Orange is mutually exclusive with the current use of Channel 258C0 at Lake Charles. See Figure 1. Second, Lake Charles will not be deprived of its only local service because it will continue to be served 4 FM stations and 3 AM stations. Third, the provision of a first local service at West Orange (2000 U.S. Census population 4,111) under Priority 3 will result in a preferential arrangement of allotments over the retention of an eighth local service at Lake Charles (2000 U.S. Census population 71,757) under Priority 4. See *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982).

3. West Orange is not located in an Urbanized Area. The proposed 70 dBu contour of KBXG will cover 100% of the Port Arthur and Beaumont Urbanized Areas. However, KBXG is currently located in the Lake Charles Urbanized Area. Therefore, this relocation does not implicate the Commission's policy regarding the migration of stations into urban areas. *See Headland, Alabama and Chattahoochee, Florida*, 10 FCC Rcd 10352 (1995) ("*Headland*"); *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988) ("*Tuck*"). Nevertheless, a *Tuck* showing is provided. In making the determination whether to award an urbanized community a first local service preference, the Commission will consider (1) the extent to which the station will provide service to the entire Urbanized Area, (2) the relative populations and proximity of the suburban and central city, and, most importantly, (3) the independence of the suburban community. *Tuck*, 3 FCC Rcd at 5377-78. In this case, from the proposed transmitter site, KBXG would place a 70 dBu contour over 100% of the Port Arthur and Beaumont Urbanized Areas. The population of West Orange (2000 U.S. Census 4,111) is 7.1% of that of Port Arthur (2000 U.S. Census 57,755) and 3.6% of that of Beaumont (2000 U.S. Census 113,866). West Orange is located 53.05 kilometers from Port Arthur and 27.79 kilometers from Beaumont. These figures are similar to those of other suburban communities granted a first local preference. *See, e.g., Old Fort, Fletcher, and Asheville, North Carolina; Surgoinsville, Tennessee, and Augusta, Georgia*, 18 FCC Rcd 12181, 12182 (2003) (Fletcher's population is 6.1% of that of Asheville, and Fletcher is located 17 kilometers from Asheville); *Malvern and Bryant, Arkansas*, 14 FCC Rcd 3576, 3577 (1999) (Bryant's population is 3% of that of Little Rock, and Bryant is located 20 miles from Little Rock). Nevertheless, the Commission has repeatedly stated that these factors are less important than evidence of independence. *See Headland*, 10 FCC Rcd at 10355. The following

analysis of the eight *Tuck* factors demonstrates the independence of West Orange from Port Arthur and Beaumont.

**(1) *Extent to which the residents of West Orange work in West Orange.***

According to 2000 Census figures, 263 of the 1,625 employed individuals in West Orange, or 16.2%, work at their place of residence. See Exhibit 2. This percentage compares favorably with other independent communities. See, e.g., *Albemarle and Indian Trail, North Carolina*, 16 FCC Rcd 13876 (2001), *application for review pending* (11.3% of working-age residents worked in community); *Coolidge and Gilbert, Arizona*, 11 FCC Rcd 3610 (1996) (13% of Gilbert's working population actually worked in Gilbert).

**(2) *Newspapers and other media that cover West Orange's local needs and***

***interests.*** *The Orange Leader* is a daily publication that is delivered to subscribers, and can also be located on the internet at <[www.orangeleader.com](http://www.orangeleader.com)>. *The Orange Leader* has served Orange County since 1875, and while it is a county paper, it provides the community of West Orange with local coverage. Therefore, the residents of West Orange do not have to rely on the media in Port Arthur or Beaumont. See Exhibit 2.

**(3) *Community leaders and residents perceive West Orange as being***

***separate from Port Arthur and Beaumont.*** West Orange is located in Orange County, Texas. The town plat for West Orange was filed in 1902 and a substantial community subsequently developed due to West Orange's proximity to the industrial facilities at Port Vernon. West Orange was incorporated in 1954 and is currently administered by a five member city council, headed by a mayor. The mayor of West Orange, Roy McDonald, recently attended the opening of a Goody's Clothing Store in West Orange. Mayor

McDonald was quoted as saying that he "is proud they have given 60 people new jobs."  
*See Exhibit 2.*

(4) *West Orange has its own local government and elected officials.* West Orange operates independently of any other government and is administered by a mayor and city council. Pursuant to the city charter, the city council shall enact local legislation, adopt budgets, determine policies, employ the city officials, execute the laws, and administer the government of the city. The mayor is the chief executive officer of West Orange, and is responsible for ensuring that the laws and ordinances of the city are enforced. In addition to the mayor and city council, the officials of West Orange include the city attorney, the chief of police, the city secretary, the municipal judge, the public works director, the building inspector, the fire marshall, and the fire chief. *See Exhibit 2.*

West Orange has a municipal court, which has jurisdiction within the corporate limits in all criminal cases arising under ordinances of the city, and has concurrent jurisdiction with any justice of the peace in any precinct in which the city is situated in all criminal cases arising under the criminal laws of the state. *See Exhibit 2.*

(5) *West Orange has one zip code.* The zip code assigned to West Orange is 77630, and the U.S. Postal Service operates an office at 3109 Edgar Brown Drive in West Orange. The listings for West Orange are contained in the Greater Orange-Bridge City phone book. The residents of West Orange can use this phone book and do not have to rely on the Port Arthur or Beaumont phone books. *See Exhibit 2.*

(6) *West Orange has its own commercial establishments and health facilities.* West Orange is home to a variety of businesses and commercial establishments. The Greater Orange Area Chamber of Commerce provides a listing of

businesses located in West Orange and serving the community of West Orange. These businesses include, Amtex Bankshares, Beaty Insurance Agency, N&T Construction, Texas Polymer Service, Trampolines USA, West Orange Mobile Home Park, Orange County Ice, Toni's Nails, Marine Grocery, Western Avenue Automotive, and the Appliance Store.<sup>1</sup> See Exhibit 2.

Health care and dental services are provided to the community of West Orange by a number of sole practitioners. West Orange is also home to a number of religious organizations, including the Christian Church of West Orange, the First Baptist Church of West Orange, the Calvary Baptist Church of West Orange, and the St. Johns United Methodist Church. See Exhibit 2.

(7) *West Orange is a separate and distinct advertising market from Port Arthur and Beaumont. The Orange Leader provides the businesses of West Orange with a place to advertise to the residents of West Orange without relying on the Port Arthur or Beaumont advertising markets. See Exhibit 2.*

(8) *West Orange has its own schools, police protection and fire protection.* The city of West Orange encompasses two school districts. The West Orange-Cove Independent School District serves the residents who live on the eastern side of West Orange. The Bridge City Independent School District serves the residents who live on the western side of West Orange. The West Orange-Cove Independent School District administers one high school, one middle school and three elementary schools. The West Orange-Stark High School football team is one of the most successful teams in Texas. It

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<sup>1</sup> West Orange shares a zip code with Orange, Texas. Therefore many of the businesses listed in this section have an "Orange" mailing address. However, research of the location of these businesses indicate that they are located in West Orange.



has the highest winning percentage of all division 4A schools in Texas. The community of West Orange is very proud of their football team and they have a website devoted to the team. *See Exhibit 2.*

The West Orange Police Department is managed by the chief of police, Michael S. Stelly. The police department was established by the city charter and the department is dedicated to making the community of West Orange a better place to live. The West Orange Fire Department, also established by the city charter, is administered by the fire marshall, Lewis Hogan. The fire marshall is responsible for the overall planning of fire prevention in the city. *See Exhibit 2.*

4. West Orange is clearly independent of Port Arthur and Beaumont and therefore deserving of a first local service. As demonstrated above, West Orange satisfies all of the independent community indicia required by *Tuck*.

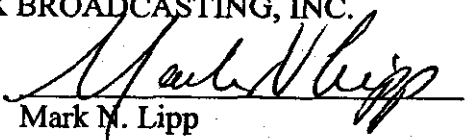
### **III. CONCLUSION**

For the foregoing reasons the Commission should delete Channel 258C0 at Lake Charles, Louisiana and allot Channel 258C0 at West Orange, Texas as that community's first local service. Apex reiterates that if the Commission allots Channel 258C0 at West Orange as that community's first local service, it will file an application and will construct the facilities as authorized. The Commission should promptly issue a Notice of Proposed Rule Making as described herein.

Respectfully submitted,

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